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February 22, 1973

Honorable Jack C. Hood
 Chairman, Washington State
 Liquor Control Board
 General Administration Building
 Olympia, Washington 98504

Cite as:
 AGLO 1973 No. 28

Dear Sir:

This is written in response to your recent letter advising us of a pending proposal by certain retail liquor licensees to have the state liquor control board amend its Rules 32, 48 and 77 (WAC 314-16-160, 314-20-090, and 314-24-170) to permit the sale of beer and wine on credit to all retail licensees. In order to assist you in responding to this request you have asked for our opinion on the following question:

"Does RCW 66.28.010 prohibit a [liquor] manufacturer or wholesaler from extending thirty days credit on sales of liquor to retail licensees?"

We answer this question in the affirmative for the reasons set forth in our analysis.

ANALYSIS

RCW 66.28.010 is the codification of § 90 of the Washington state liquor act (§ 90, chapter 62, Laws of 1933, Ex. Sess.) as later amended by § 14, chapter 174, Laws of 1935, and § 6, chapter 217, Laws of 1937. It provides as follows with respect to certain financial dealings between manufacturers or wholesalers of liquor, on the one hand, and licensed liquor retailers on the other:

"No manufacturer or wholesaler, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, nor shall any manufacturer or wholesaler own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person, under any arrangement whatsoever, conduct his business upon property in which any manufacturer or

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wholesaler has any interest, nor shall any manufacturer or wholesaler advance moneys or moneys' worth to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of moneys or moneys' worth. No manufacturer or wholesaler shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer or wholesaler sell at retail any liquor as herein defined.

"Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien or through interlocking directors, or otherwise." (Emphasis supplied.)

The essential basis for our answer to your question is the phrase "or moneys' worth" as it twice appears in this statute. This phrase did not appear in the original, 1933 version of the law but was, instead, added by amendment in 1935. See, § 14, chapter 174, Laws of 1935. It was apparently enacted as a response to a problem described by the liquor control board in the following excerpt from its second annual (1935) report to the governor and legislature:

"At the beginning of the period under review the Board concentrated on the supervision and regulation of retail outlets, with the result that supervision of brewers and beer wholesalers was relaxed and a few of them failed to comply with the Board's requirements. The worst violations were in the nature of financial assistance to retail outlets, particularly by means of credit extensions and rebates. A few brewers and beer wholesalers went so far as to permit retailers to incur large credits and then forced them to handle their products exclusively. Thus, it became evident that more supervision was necessary."

However, although "excessive" credit extensions may have been the problem precipitating the 1935 amendment, its language is in no manner qualified so as to prohibit

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only those credit extensions by manufacturers or wholesalers to retail licensees which either exceed a given value or extend beyond a limited period of time. On the contrary, the amendment states, in simplest terms, that no manufacturer or wholesaler shall advance moneys or moneys' worth to any retail licensee "under any arrangement whatsoever."

It is axiomatic that in determining legislative intent, the first resort of the courts is to the context and subject matter of the legislation, because the intention of the lawmakers is to be deduced, if possible, from what it said. Hatzenbuehler v. Harrison, 49 Wn. 2d 691, 306 P. 2d 745 (1957), and cases cited therein. Moreover, where the language of a statute is plain and not ambiguous, there is no room for construction since the meaning of such a statute will be discerned from the wording of the statute itself. State v. Houck, 32 Wn. 2d 681, 203 P. 2d 693 (1949).

We think that RCW 66.28.010, supra, as amended by § 14, chapter 174, Laws of 1935, meets this test. Without qualification, it prohibits any advancement of moneys or moneys' worth by any liquor manufacturer or wholesaler to any licensed retailer - and clearly an extension of credit constitutes such an advancement of an equivalent of money, or a "moneys' worth." Accord, Gillett v. Chicago Title and Trust Co., 230 Ill. 373, 82 NE 891 (1907), defining the full phrase "money or moneys' worth" as meaning "cash or its equivalent." Thus, this statute as it presently reads, in our opinion, prohibits even such short term credit sales of liquor by a manufacturer or wholesaler to a licensee as are contemplated by your question and by the proposed rule changes which gave rise to this request.

In so concluding we are aware that similar (although less broadly based) rules allowing limited short term credit extensions have been promulgated in the past by the liquor control board - even after the 1935 amendment to RCW 66.28.010 was enacted. See, Rule (31), as amended on November 1, 1935, to permit credit not to exceed thirty days to be extended to holders of class E licenses covering retail sales of beer for off-premise consumption and to holders of on-premise beer and wine licenses specially issued to railroads; also, Rules (41), (77) and (80), effective October 1, 1937, repeating the above permission as to railroad licensees. ¹ If RCW 66.28.010, supra, was at all ambiguous on this point, the board's adoption of these rules would, perhaps, have some significance in terms of your present question under the long-standing doctrine of administrative construction applicable

¹ Now renumbered and codified as WAC 314-20-090, 160 and 170.

in such cases. Accord, White v. State, 49 Wn. 2d 716, 725, 306 P. 2d 230 (1957), wherein our court described this as follows:

"When a statute is ambiguous, the construction placed upon it by the officer or department charged with its administration, while not binding on the courts, is entitled to considerable weight in determining the intention of the legislature; and the persuasive force of such interpretation is strengthened when the legislature, by its failure to amend the statute, silently acquiesces in the administrative interpretation. . . ."

Even in the case of an ambiguous statute, however, this rule is not always determinative of the question. See, e.g., Davis v. King County, 77 Wn. 2d 930, 468 P. 2d 679 (1970). And where, as in the instant case, the statute is not ambiguous on the point in issue (i.e., the existence of any exceptions to an apparent unqualified ban on extensions of credit to licensees by manufacturers or wholesalers of liquor), the doctrine is simply inapplicable. As recently stated in Pringle v. State, 77 Wn. 2d 569, 573, 464 P. 2d 425 (1970), a case involving regulations promulgated by the former state tax commission (now, department of revenue):

"Although interpretive rules and regulations promulgated by the tax commission are entitled to great weight in resolving doubtful meanings of taxing laws, they may not amend or change the enactments of the legislature. Pierce County v. State, 66 Wn. 2d 728, 404 P. 2d 1002 (1965)."

Only the legislature itself can do the latter, and in the case of RCW 66.28.010, supra, it is our considered opinion that if the liquor control board desires to allow limited credit transactions between manufacturers or wholesalers and licensed retailers, it should first proceed to seek an appropriate amendment to this statute to permit this to be done. We would, of course, be happy to be of assistance in drafting such legislation for the board.

Honorable Jack C. Hood

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We trust the foregoing will be of assistance to you.

Very truly yours,

SLADE GORTON
Attorney General



PHILIP H. AUSTIN
Deputy Attorney General

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